

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IBM CORPORATION,

Plaintiff,

v.

MICRO FOCUS (US), INC., and MICRO
FOCUS INTERNATIONAL PLC,

Defendants.
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ORDER

22 CV 9910 (VB)

On December 14, 2022, defendants moved to dismiss the complaint. (Doc. #28).

Accordingly, it is hereby ORDERED that, by no later than December 27, 2022, plaintiff must notify the Court by letter whether plaintiff (i) intends to file an amended complaint in response to the motion to dismiss, or (ii) will rely on the complaint that is the subject of the motion to dismiss.

If plaintiff elects not to file an amended complaint, the motion will proceed in the regular course, and the Court is unlikely to grant plaintiff a further opportunity to amend to address the purported deficiencies made apparent by the fully briefed arguments in defendants' motion. See Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC, 797 F.3d 160, 190 (2d Cir. 2015) (leaving "unaltered the grounds on which denial of leave to amend has long been held proper, such as undue delay, bad faith, dilatory motive, and futility"); accord F5 Capital v. Pappas, 856 F.3d 61, 89–90 (2d Cir. 2017). The time to file opposing and reply papers shall be governed by the Federal Rules of Civil Procedure and the Local Civil Rules, unless otherwise ordered by the Court.

If plaintiff elects to file an amended complaint, plaintiff must file the amended complaint by no later than 14 days after notifying the Court of plaintiff's intent to do so. Within 21 days of such amendment, defendants may either: (i) file an answer to the amended complaint; or (ii) file a motion to dismiss the amended complaint; or (iii) notify the Court by letter that defendants are relying on the initially filed motion to dismiss.

Dated: December 15, 2022
White Plains, NY

SO ORDERED:


Vincent L. Briccetti

United States District Judge